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THE WORKS OF JAMES WILSON.

James Wilson, the first occupant of a chair in the Law Department of the University of Pennsylvania, was, without doubt, a remarkable man. Professor Bryce, in his work upon *The American Commonwealth*, speaks of him repeatedly in emphatic terms of praise. In one place, he declares that Wilson was "one of the luminaries of his time, to whom subsequent generations of Americans have failed to do full justice." In another, he refers to him as being "in the front rank of political thinkers of his age." Again, he calls him "one of the strongest men in the Federal Convention." He calls attention to "a remarkable prediction by Wilson of the influence which American freedom would exert upon the Old World;" and in still another connection, he says: "the acuteness of James Wilson had perceived that the two famous confederacies of modern Europe did not supply a model for America." Finally, he classes Wilson with Alexander Hamilton in the weight of intellect and influence which he cast into the national scale, and points out that the speeches of Wilson in the Pennsylvania Ratifying Convention, as well as in the great Convention of 1787, "display an amplitude and profundity of view in matters of Constitutional theory."

Praise so high and constant from such an eminent authority has not been without its effect. For several years past students of our institutions, and historic scholars, have been led to a study of Wilson's work in the Federal Convention as reported in Elliott's *Debates*, and have been outspoken in his praise. Articles have appeared from time to time in leading monthly magazines, and the "discovery" of Wilson by Bryce has been paraded with more or less show of learning. It is greatly to be regretted that no adequate biography of this truly great man has ever been prepared. It may now be too late. The sketches of him in Sanderson's *Lives of the Signers*, in Curtis's *History of the Constitution*, in Carson's *History of the Supreme Court of the United States*, in Stone and McMas-

ter's Pennsylvania and the Federal Constitution, are but outlines of a great career. His letters have never been collected, though some of them are accessible in the autograph collections of the country, and the material at the command of the future biographer is still widely scattered. Fortunately, his works, in three volumes, first published in Philadelphia in 1804, by his son, Rev. Bird Wilson (formerly a judge of high character and reputation), and recently republished in Chicago, in two volumes, carefully and intelligently edited by James DeWitt Andrews, constitute a substantial and fitting monument of his fame.

[THE WORKS OF JAMES WILSON, Associate Justice of the Supreme Court of the United States, and Professor of Law in the College of Philadelphia, being his Public Discourses upon Jurisprudence and the Political Science, including Lectures as Professor of Law, 1790-2. Edited by JAMES DEWITT ANDREWS. Chicago : Callaghan & Co. 1896. Two Vols.]

James Wilson was the familiar associate of the public men of his day, a leading member of the Philadelphia Bar, conspicuous among the illustrious signers of the Declaration of Independence, one of the architects of both his State and National governments, and raised by the hand of Washington to the high place of Associate Justice of the Supreme Court of the United States.

His education and public experience had fully prepared him for the post. He was a native of Scotland, having been born September 14, 1742, and had studied at Glasgow, St. Andrew's and Edinburgh, and at the age of twenty-one years had emigrated to New York, and in 1766 arrived in Philadelphia. His attainments in the classics were remarkable; the student of his literary remains cannot fail to be impressed by the evidence of his familiarity with the history and philosophy of Greece and Rome. For a short time he was a tutor in the College of Philadelphia, which subsequently called upon him to again become her servant. He studied law in the office of John Dickinson, and after some years of practice at Reading, Carlisle and Annapolis, came to Philadelphia, and

was admitted to the Philadelphia Bar in December, 1778. His political experience was great. An ardent advocate of American Independence, he was for six years a member of the Continental Congress, though not continuously, and was concerned in all the measures of government both during and after the war. In the principles of Finance and Constitutional Law he was particularly learned. As an orator he held high rank both as an advocate and a parliamentary debater; and his speech in the Convention of Pennsylvania, called to adopt or reject the Constitution framed for the Government of the United States, will compare favorably, as a luminous exposition of the work he had helped to perform, with any of the arguments in its favor to be found reported in Elliott's Debates. According to Mr. Curtis, it gained the vote of Pennsylvania for the new government against the ingenious and captivating objections of its opponents. He served in the Federal Convention as one of the "Committee on Detail," and submitted a draft of a Constitution, many of the leading features of which were subsequently adopted. In politics he was a Federalist, and a strenuous advocate of the National idea. His appointment as one of the Justices of the Supreme Court was dated September 29, 1789, and we find him sitting at Circuit Court for the Pennsylvania and Virginia Districts with Justices Blair, Peters, Paterson, Chase and Iredell, and in the Supreme Court with Chief Justices Jay, Rutledge and Ellsworth. It is remarked by Mr. Watson, in his Annals, quoting the published opinion of William Rawle, that Judge Wilson on the Bench did not equal Mr. Wilson at the Bar. An examination of his judicial opinions, as published in the second and third volumes of Dallas's Reports, leads to the conclusion that the remark is just. Late in life he became deeply involved in speculations in land, and his financial misfortunes deprived him of the equanimity of mind so necessary to the proper performance of the duties of a judge, but apart from this, his temper and habits of thought were those of an advocate, and his style, tested by the standards of to-day, would be condemned as diffusive. The questions agitated before him were mainly those touching the jurisdiction of the

courts of the United States : two of the cases, in the decision of which he participated, have become historic. The judgment in the suit of *Chisholm, Exr., v. The State of Georgia*, that a State could be sued by a citizen of another State, led to the Eleventh Amendment of the Federal Constitution. His decision at Circuit in Virginia, in the cause of *Hylton v. The United States*, sustaining the constitutionality of the carriage tax, was affirmed upon error, and has been relied on as satisfactory authority from that day to this.

Upon the establishment of the Law Department in the College of Philadelphia, Judge Wilson resigned his membership of the Board of Trustees to enter upon the duties of his chair. In the papers of the day there appeared a short account, dated October 26, 1790, of the state of the college and of the public lectures to be delivered during the ensuing winter, and the statement was made that great expectations had been justly formed of the usefulness of the Law School lately instituted, from the great learning and experience of the Professor. The plan of the Law School, sketched by Judge Wilson, was published as a part of the notice, and the announcement made that lectures would begin about November 15th.

The introductory lecture was delivered on December 15, 1790, in the quaint old-fashioned hall of "The Academy," whose plainness recalled the simplicity of the times when the eloquence of Whitfield aroused the people to provide the shelter that sectarian prejudice had denied. The event was one of extraordinary interest. A distinguished and brilliant audience awaited the lecturer. The gallery was crowded with those citizens who had received tickets of admission from Judge Wilson himself; President Washington and his Cabinet, both Houses of Congress, the Supreme Executive Council, the members of the Assembly, the Mayor, Aldermen and Common Councilmen, the Judges of the Courts, citizens of mark and influence, and members of the Bar, occupied the lower part of the hall—"a polite assemblage"—while the stately and powdered dames who clustered about Mrs. Washington and Mrs. Hamilton, by the interest they displayed,

embarrassed the lecturer, who "never before had the honor of addressing a *fair* audience."

The genius of the orator soon conquered timidity, and paid a polished but glowing tribute to the most distinguished patriot of the world.

At the close of the lecture the annual Commencement was held, and the degree of LL.D. conferred upon the Professor who had proved his ability to sustain it with honor. The lecture was much admired, and elegant extracts were published in the magazines of the day.

Lectures were delivered on three days of every week, at six o'clock in the evening, at the college, and law exercises were held every Saturday. The extent of the plan rendered it impossible for the lecturer to complete his subjects in one season; three courses were necessary for the purpose. The first course was delivered in the winter of 1790-91, and consisted of those lectures contained in the first part of his published works. The second course which was, in a great measure, delivered during the following winter, would have consisted, we are told by his son, of the remaining two published parts. Interruptions occurred; the second course was not concluded, and after the union of the College with the University of Pennsylvania, though we find a resolution of the Board of Trustees of April 3, 1792, erecting a law professorship in the new seminary, and appointing Judge Wilson to fill the chair, yet no lectures were delivered. The cause is left to conjecture. Mr. Graydon and Mr. Rawle tell us that the lectures had not entirely met the expectations that had been formed. It is to be feared that the encouragement afforded by students was slight—an experience not peculiar to those days. Judge Wilson never shrank from the performance of duty, and never permitted public duties to conflict. We find him, shortly after, engaged upon a work of magnitude, which he would have scarcely undertaken to the neglect of other tasks. A solution may, perhaps, be found in the action of the trustees, who, in obedience to a request of Professor Wilson to fix the amount of his fees, resolved that the amount of compensation to be demanded of each pupil should not exceed ten

guineas. This was a flattering tribute to the Professor as an estimate of the value of his services, but not one likely to throng the lecture hall with students. The fees required of his office students were in excess of those asked by other members of the Bar. When Bushrod Washington came to Philadelphia as a law student, directed by his father to study with Mr. Wilson, he objected to the amount of compensation demanded, and it needed the advice and entreaty of General Washington to remove the scruples of his nephew. In fact, General Washington himself paid the bill by giving his note to Wilson for one hundred guineas. The advantages to be secured at such a cost were slight. It is said that Mr. Wilson rarely entered his office except to consult his books, and devoted but little time to his students, among whom were Samuel Sitgreaves and Bushrod Washington. He never engaged with them in discussion; to a direct question he gave a short answer, and a general request for information was evaded or postponed. His mind, accustomed to dwell upon general principles and deal with the great problems of government, descended with difficulty to the trifles and technicalities and niceties of the law. He gradually withdrew from the Common Law Courts and confined himself to Admiralty Practice.

It is known, however, that though the delivery of the lectures was discontinued, the author intended to complete his plan for publication. This he was destined never to accomplish, and the labor of editing and arrangement was well performed by his son, Bird Wilson, Esq., afterwards a distinguished judge, and later a clergyman of the Episcopal Church, under whose direction three handsome volumes were published at Philadelphia in 1804. The passage from Cicero quoted on the title-page fitly embodies the principle that animated and directed the exertions of this remarkable man, toiling through many years for the public good: *Lex fundamentum est libertatis, qua fruimur. Legum omnes servi sumus, ut liberi esse possimus.*

In March, 1791, the lower house of the Assembly of Pennsylvania appointed Judge Wilson to revise and digest the laws of the Commonwealth, to ascertain and determine how far any

British statutes extended to it, and to prepare bills containing such alterations, additions, and improvements as the code of laws, and the principles and forms of the Constitution then lately adopted, might require. In this work he made considerable progress, but it was finally abandoned, as a bill passed by the House providing for the expense of employing assistants and securing the necessary books, was negative by the Senate. Materials were then collected for a private publication, which the author did not live to arrange.

He also projected commentaries on the Constitution of the United States and the Constitution of Pennsylvania, and a report upon criminal law, and argued in favor of writing on the law in the same manner and style as of other sciences. He died at the age of fifty-six, in 1798, while on circuit, in the house of his associate, Judge Iredell, at Edenton, North Carolina. He was twice married, and left six children; one grandchild, the daughter of his daughter Mary, wife of Paschal Hollingsworth, is now his only surviving descendant.

Many years after his death, Justice William Johnson, of the Supreme Court of the United States, in his life of General Nathaniel Greene, charged Wilson with being one of the cabal opposed to Washington in 1777-78, and plotting his removal in the interests of Lee or Gates. The charge was disproved by Judge Peters, Judge Washington and Bishop White, in letters addressed to Rev. Bird Wilson, D.D., and on their evidence the author publicly retracted his statements and acknowledged his error.

It is gratifying to know that the merits of the first lectures, delivered in the oldest existing law school in the country, have obtained cordial recognition at this day, and are again offered to the attentive consideration of scholars and of law students. The work of the editor, Mr. Andrews, of Chicago, has been well performed. He has pointed out the striking features of the work, and stated them in a manner likely to awaken interest. He declares that the chief merit of Justice Wilson is in stating with clearness the fundamental notion of sovereignty, and that in contending that society is natural, and that there was no state of nature which antedated society, he

has exposed the errors of those who contended for a fictitious compact, and in doing this Mr. Wilson anticipated the accepted doctrine of to-day in opposition to Locke, Burlamaqui and Puffendorf, who groped about in search of an original compact.

Wilson is especially clear and critical in his examination of the celebrated definition of Municipal Law given by Blackstone, and attention is called by the editor to the fact that Dr. Hammond, himself a celebrated teacher of the law, had declared that it is hardly creditable to the American Bar and still less so to the Law Schools that Blackstone's definition should be so generally received, while this exposition of Judge Wilson was suffered to remain in oblivion. It is pointed out, too, that Wilson clearly foreshadowed the doctrine of Webster in arguing that the Constitution of the United States was not a compact, and this fundamental view is traced through the opinions of Wilson, particularly in the great case of *Chisholm v. Georgia*. No less an authority than Judge Cooley is quoted as awarding the palm for originality to Wilson in developing the national idea.

The work has been re-arranged and condensed into two volumes, the topographical execution of which is most creditable to both author and publisher. The citations of authorities in the notes are carefully and accurately stated, and the work itself is deserving of the closest examination. The discussions of the general principles of law and the nature of political obligations, the law of nature and the law of nations, the relations of man as a member of society, as a member of a Confederation, as a member of the Commonwealth of Nations, of man as an individual, followed by exhaustive treatises upon government, and a critical comparison of the Constitution of the United States with that of Great Britain, are particularly deserving of attention. The sources of the Common Law are explained; the nature and definition of Municipal Law, and the nature and philosophy of evidence are exhaustively treated. Then follows an admirable discussion of the distribution of powers between the National and State Constitutions, a particular examination of the Executive and Legislative Departments and of the nature of judicial

power, with a complete examination of the nature and Constitution of Courts, of Judges, of Juries, of subordinate officers, of citizens and aliens and of the natural rights of individuals.

No less worthy of attention are the chapters upon the Nature of Crimes and the History of Property. There are three remarkable Constitutional discussions upon the nature of the Constitution, and on the power of the Congress of the old Confederation to incorporate the Bank of North America.

The chapter upon the nature of the legislative authority of Parliament leaves but little to be added, while the maxims that "all men are by nature equal and free," and that "all lawful governments are founded on consent," are marked by extraordinary range of learning, and clearness as well as profundity of statement.

We heartily commend these volumes to the attention of all those who are anxious to ascertain the views, not only of a great statesman and publicist, but of one who bore an active part in the laborious task of Constitution making. They will hold, as that eminent jurist George Sharswood remarked of the first edition, "an honored place in the library of the American lawyer."

Hampton L. Carson.